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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,441	11/07/2003	Gaelle Brun	05725.1257-00	9409
22852	7590	09/16/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER	
			CHANNAVAJALA, LAKSHMI SARADA	
		ART UNIT	PAPER NUMBER	
		1611		
		MAIL DATE	DELIVERY MODE	
		09/16/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/702,441

Applicant(s)

BRUN ET AL.

Examiner

Lakshmi S. Channavajjala

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15 and 17-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9, 11-15 and 17-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 5-27-08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Receipt of IDS, amendment and response dated 5-27-08 is acknowledged.

Claims 1-9, 11-15 and 17-34 is acknowledged.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5-27-08 has been entered.

Response to Arguments

2. Applicant's arguments, see pages 1-4, filed 5-27-08, with respect to the rejection(s) of claim(s) 1-9, 11-15 and 17-34 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as follows:

Claim Rejections - 35 USC § 112

3. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Instant claim is dependent from claim 1, which recites the proviso, "if x is O, R2 is O, n is 0m then Z is not ethylene, isopropylene, propylene, 2-hydroxypropylene, or

isopropyl-2,2'-dimethylpropylene". However, the instant claim recites compounds i-vii, of which compounds v and vi contradict the above proviso because the variable z in the two compounds can be (CH₂-CH₂-CH₂-CH₂), (CH₂-CHR-CH₂) or (CH₂-CHR'-CH₂), where R and R' are 1-4 alkyl radicals.

DETAILED ACTION

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 14-15, 18-23, 27 and 31-34 are rejected under 35 U.S.C. 102(a) or 102(e) as being anticipated by US 6,495,150 (Bekele).

7. Bekele teaches cosmetic compositions comprising a functionalized acid anhydride of formula given in col.2, where X is a cosmetic benefit agent and reads on instant variable z, which is substituted. In particular, while Bekele teaches several cosmetic benefit agents (starting col. 3), the reference exemplifies compounds in col. 24-27, which are encompassed by the claimed description for z. For the claimed amounts and additive compounds such as polymers, surfactants etc, see examples of

Bekele, which recite several cosmetic additives and hence instant claims are anticipated by Bekele.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claims 1-9, 11-15 and 17-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001158724 (JP 724, abstract submitted on PTO-1449, a full translation attached to this action).

JP 724 teaches a hair dye composition comprising a 1, 3-dioxolan-2-one derivative (which is a cyclic carbonate) in combination with an acidic dye and a water soluble polymer (abstract). The cyclic carbonate described in formula 2 recites variable R, which is $-(OR_2)_n-OR_1$ or $-(OR_2)_nOCOR_1$, where R1 is an integer of 0-30 and R2 is an alkylene group of C-4 carbons. Instant claim recites a proviso that "if X is O, R2 is O, and n is 0, then Z is not ethylene, isopropylene, propylene, 2-hydroxypropylene, or isopropyl-2,2'-dimethylpropylene". JP 724 teaches formula 2, which according to the above description is not necessarily ethylene, isopropylene, propylene, 2-hydroxypropylene, or isopropyl-2,2'-dimethylpropylene and instead may include OR2, where R2 is C2-4 and R1 may be pentyl, hexyl, heptyl, stearyl, ethylhexyl groups, xanthine, quinolone groups etc (0014-0017).

For the claims 19-20, reciting the amounts of compound of formula I, see [0019].

For the claimed additional compounds (claims 20-34), JP 724 teaches polymer (0020), wetting agents (0028), solubilizing agents, pH adjusting agents, dyes (0010) and in amounts that are within the claimed amounts ((0021).

JP 724 does not exclude the specific cyclic carbonates such as those encompassed by the instant proviso. However, JP 724 teach that the cyclic carbonate compounds encompassed by formula I are excellent in providing dye affinity to hair, skin, overcomes the problems of damaged caused by hair dyes, scarcely dyes skin and is highly safe for hairs and skins. While JP 724 does not exemplify compounds other than those in examples 3-5, JP 724 teaches all of the compounds have the above advantages and accordingly, absent evidence to the contrary, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to choose any of the compounds described by formula I of JP 724 with an expectation to achieve safe and highly effective hair dyeing effect.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/
Primary Examiner,
Art Unit 1611
August 17, 2008